

13094  
RECORDATION NO. MAY 13 1981

MAY 13 1981 - 11 20 AM  
INTERSTATE COMMERCE COMMISSION

13094-A  
RECORDATION NO.

MAY 13 1981 - 11 20 AM  
INTERSTATE COMMERCE COMMISSION

THE PAUL REVERE PROTECTIVE  
LIFE INSURANCE COMPANY  
THE PAUL REVERE VARIABLE  
ANNUITY INSURANCE COMPANY

13094-B  
RECORDATION NO.

MAY 13 1981 - 11 20 AM  
INTERSTATE COMMERCE COMMISSION

13094-D  
RECORDATION NO. February 9, 1981

MAY 13 1981 - 11 20 AM  
INTERSTATE COMMERCE COMMISSION

Secretary of the Interstate  
Commerce Commission  
Washington, D. C. 20423

13094-C  
RECORDATION NO. MAY 13 1981 - 11 20 AM  
INTERSTATE COMMERCE COMMISSION

Dear Sir:

In accordance with the provisions of 49 C.F.R.  
Part 1116, enclosed for recording with the Interstate  
Commerce Commission are three original copies of  
the following documents in connection with two  
related leveraged lease transactions:

First Transaction

1. Lease of Railroad Equipment, dated as  
January 1, 1981, between Martin Gas Sales, Inc.  
(the "Lessee") as lessee, address: P.O. Drawer 191,  
N. Kilgore, Kilgore, Texas 75662, Mercantile Texas  
Capital Corporation (the "Lessor") as lessor, address:  
P.O. Box 255415, 1704 Main Street, Dallas, Texas  
75265, and Rubin S. Martin, Jr., (the "Guarantor")  
as guarantor, address: P.O. Drawer 191, N. Kilgore,  
Kilgore, Texas 75662.

2. Security Agreement, dated as of January 1,  
1981, between Lessor as mortgagor (same address as  
above) and The Paul Revere Protective Life Insurance  
Company, The Paul Revere Variable Annuity Insurance  
Company, Account No. 1, and The Paul Revere Variable  
Annuity Insurance Company, Account No. 2 (collectively  
the "Lenders") as mortgagees, address: 1275 King  
Street, Greenwich, Connecticut 06830.

3. Assignment Agreement, assigning said  
Lease, dated as of January 1, 1981, between Lessor  
as assignor, (same address as above) and Lenders as  
assignees (same address as above).

1-133A053  
No. 1-133A053  
Date MAY 13 1981  
Fee \$ 2.00  
ICC Washington, D. C.

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FEE OPERATION BR.

13094-E  
RECORDATION NO. MAY 13 1981 - 11 20 AM  
INTERSTATE COMMERCE COMMISSION

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Second Transaction

1. Restated Lease of Railroad Equipment, dated as of January 1, 1981, between Lessee as lessee (same address as above), Guarantor as guarantor (same address as above) and Mercantile National Bank at Dallas ("Lessor Parent") as lessor, address: P.O. Box 255415, 1704 Main Street, Dallas, Texas 75265.

2. Security Agreement, dated as of January 1, 1981, between Lessor Parent as mortgagor (same address as above) and Lenders as mortgagees (same address as above).

3. Assignment Agreement, assigning said Restated Lease, dated as of January 1, 1981, between Lessor Parent as assignor (same address as above) and Lenders as assignees (same address as above).

The first transaction covers 59 molten sulfur tank cars manufactured by Trinity Industries, Inc. in Dallas, Texas, specification 111A100W-3, serial numbers 434555 through 434613 and identification numbers MGSX 106 through MGSX 164, respectively. The second transaction covers 6 molten sulfur tank cars manufactured by Trinity Industries, Inc. in Dallas, Texas, specification 111A100W-3, serial numbers 434549 through 434554 and identification numbers MGSX 100 through MGSX 105, respectively.

Please return all original documents to Ian Shrank, Esq., Morgan, Lewis & Bockius, 9 West 57th Street, New York, New York 10019.

The Paul Revere Protective  
Life Insurance Company  
The Paul Revere Variable  
Annuity Insurance Company

By Alexander A. Mente  
Vice President - Investment

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Ian Shrank, Esq.  
Mortan, Lewis & Bockius  
9 West 57th Street  
New York, New York 10019

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/13/81 at 11:20AM, and assigned recordation number(s). 13094, 13094-A, 13094-B, 13094-C, 13094-D, & 13094-E

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. 13094 FILE 1425

MAY 13 1981 - 11 20 AM

INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

Dated as of January 1, 1980

between

MARTIN GAS SALES, INC.,

Lessee,

and

MERCANTILE TEXAS CAPITAL CORPORATION,

Lessor,

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on February 13, 1981, at 11:20 a.m., recordation number 13094. U.C.C. Financing Statements with respect to the equipment described herein were filed with the Secretary of State of the State of Texas on February \_\_, 1981, recordation numbers \_\_ and \_\_.

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## LEASE OF RAILROAD EQUIPMENT

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\* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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LEASE OF RAILROAD EQUIPMENT, dated as of January 1, 1981, among MARTIN GAS SALES, INC., a Texas corporation (the "Lessee"), MERCANTILE TEXAS CAPITAL CORPORATION, a Texas corporation (the "Lessor") and RUBIN S. MARTIN, JR. (the "Guarantor").

WHEREAS the Lessee has entered into a Purchase Order, dated April 4, 1980 and accepted April 8, 1980 (the "Purchase Agreement") with Trinity Industries Inc., a Texas corporation (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessee 65 molten sulfur tank cars;

WHEREAS the Lessee has assigned its interest in the Purchase Agreement pursuant to a Purchase Agreement Assignment, dated as of December 30, 1980 (the "Purchase Agreement Assignment") to Mercantile National Bank at Dallas (the "Lessor Parent") and the Lessor Parent has reassigned said interest to the extent it concerns the 59 molten sulfur tank cars described in Appendix A hereto (the "Units") pursuant to a Purchase Agreement Reassignment, dated as of January 1, 1981, (the "Purchase Agreement Reassignment");

WHEREAS the Lessor has purchased the Units and the Lessee desires to lease the Units from the Lessor pursuant hereto; and

WHEREAS the Lessor will assign this Lease for security purposes to The Paul Revere Protective Life Insurance Company, The Paul Revere Variable Annuity Insurance Company, Account No. 1, and The Paul Revere Variable Annuity Insurance Company, Account No. 2 (the "Lenders") pursuant to an Assignment Agreement (the "Assignment"), dated as of January 1, 1981, and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement substantially in the form attached to the Assignment (the "Consent").

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units delivered to and accepted by the Lessor under the Purchase Agreement to the Lessee upon the following terms and conditions:

## 1. NET LEASE

This Lease is a net lease. Each of the Lessee's obligations to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee or the Guarantor against the Lessor under this Lease or the Purchase Agreement including the Lessee's or the Guarantor's rights by subrogation thereunder to the Builder, the Lenders or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee or the Guarantor be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee or the Guarantor, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee or the Guarantor hereunder shall be final and the Lessee or the Guarantor shall not seek to recover all or any part of such payment (except for any excess payment made in error) from the Lessor or the Lenders for any reason whatsoever.

## 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Agreement. Each delivery of a Unit to the Lessor under the Purchase Agreement shall be deemed to be a delivery hereunder

to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Lessor. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit in behalf of the Lessor under the Purchase Agreement and on behalf of itself hereunder and to execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in substantially the form of Appendix C hereto, stating the Purchase Price of such Unit and that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

### 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease as follows:

(a) Interim Rent. The Lessee will pay the Lessor rent for each Unit during the Interim Term (as defined below) as to such Unit in an amount equal to the product of the Purchase Price of such Unit times the Prime Rate of the Lessor in effect from day to day during the Interim Term. Interim Rent as to each Unit will be due and payable on March 1, 1981. As used herein, the term "Purchase Price" for each Unit means the price actually paid by the Lessor to the Builder for such Unit, including, without limitation, partial payments and deposits, any sales taxes paid with respect to the purchase of such Unit, and any other costs incurred by the Lessor in connection with the purchase thereof, which Purchase Price is stated in the Certificate of Acceptance for each Unit.

(b) Basic Rent. Throughout the Primary Term (as defined below) of this Lease the Lessee will pay rent ("Basic Rent") for each Unit monthly in advance, on the first day of each month (each such date is hereinafter called a "Rental Payment Date"), beginning on April 1, 1981, in an amount equal to 1.13% of the Purchase Price of each such Unit.

Any provision hereof to the contrary notwithstanding, the rentals payable hereunder, the Casualty Values and the Termination Values will never be less than those amounts and percentages required to enable the Lessor to satisfy

its obligations to pay or repay the Secured Notes and interest thereon, regardless of any limitation of liability set forth in the Security Agreement, dated as of January 1, 1981, between the Lessor and the Lenders (the "Security Agreement").

3.2. Payments on Nonbusiness Days. If any Rental Payment Date referred to in § 3.1 is not a business day the rental payment otherwise payable on such date shall be payable on the preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Texas or New York are authorized or obligated to remain closed.

3.3. Instructions To Pay Lenders and Lessor. Upon execution and delivery of the Assignment and until the Lenders shall have advised the Lessee in writing that all sums due from the Lessor under the Security Agreement have been fully satisfied and discharged, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Lenders in immediately available funds in accordance with the payment instructions set forth in Section 1.3 of the Security Agreement; provided, however, that so long as and only so long as no event of default (or other event which with the passage of time or the giving of notice or both would become an event of default) under the Security Agreement has occurred and is continuing, the Lessee shall pay directly to the Lenders sums necessary to pay in full all amounts owed to the Lenders and shall pay the balance of any sums owed hereunder, if any, directly to the Lessor.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment due to the Lessor pursuant to § 3.3 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of the Lease as to each Unit will be as follows:

(a) Interim Term. The Interim Term (herein so called) for each Unit will begin on the date such Unit is delivered by the Builder to, and accepted by, the Lessee, as evidenced by the Lessee's execution and delivery to the Lessor of a Certificate of Acceptance as to such Unit, and will end on February 28, 1981.

(b) Primary Term. The Primary Term (herein

so called) for each Unit will begin on March 1, 1981, and will end on February 28, 1994.

The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee and Guarantor Subject to Security Agreement. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee and the Guarantor under this Lease and in and to the Units are subject to the rights of the Lenders under the Security Agreement. If an event of default should occur under the Security Agreement the Lenders may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term, all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder and (ii) the Lessee is complying with the provisions of the Consent, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 hereof.

## 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lenders, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Lenders' title to and property in such Unit and the rights of the Lessor under this Lease and of the rights of the Lenders under the Security Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lenders and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Agreement shall have been filed, recorded and deposited and (ii) the Lessee

shall have furnished the Lenders and the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Lenders' and the Lessor's interest in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Lenders and the Lessor in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

## 6. TAX INDEMNIFICATION

6.1. General Tax Indemnification. The Lessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify on an after-tax basis the Lessor and the Lenders and their successors and assigns and any affiliate of any of the foregoing (the "Indemnified Persons") from and against all taxes (including, without limitation, income, franchise, gross receipts, excise, sales, use, leasing, leasing use, fuel, excess profits, value-added, turnover, occupational, personal property, transfer and stamp taxes), payments in lieu of taxes, levies, imposts, duties, assessments, fees (including, without limitation, license, documentation, recording and registration fees), charges and withholdings of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever, imposed, whether levied or imposed upon or asserted against an Indemnified Person or otherwise by any Federal, state or local government in the United States or by any foreign county or foreign taxing authority or territory or possession of the United States or by any international organization or taxing authority or governmental subdivision of any of the foregoing, upon or with respect to (a) the Units or any part thereof, (b) the registration, deregistration, manufacture, financing, purchase, acceptance, rejection, ownership, acquisition, delivery, non-delivery, lease, sublease, preparation, replacement, installation, storage, maintenance, repair, modification, alteration, testing, transportation, transfer of title, abandonment, possession, rental, use, operation, condition, sale, return or other application or disposition of all or any part of the Units, (c) the rentals, receipts or earnings arising from the Units, or any part thereof (including, but not limited to, rentals payable under the Lease) or such applications or dispositions

thereof, (d) the Participation Agreement, the Security Agreement, the Assignment, the Secured Notes (including the principal thereof, premium, if any, and interest thereon) (the "Operative Documents"), or any payment made pursuant thereto or any other transaction contemplated thereby, (e) the property or income or other proceeds received with respect to property held by the Lessor or by the Lenders under the Security Agreement, (f) the franchise or right or authority of an Indemnified Person to exist or do business by reason of the making or performance of the Operative Documents, or (g) otherwise with respect to or in connection with the transactions contemplated by the Operative Documents (all of the foregoing indemnified items being referred to herein as "Taxes"); excluding, however, any of the following:

(i) Federal Taxes and Taxes levied by the jurisdiction in which the Lessor has its principal place of business (the "Home State"), based upon or measured by the net income of the Lessor, but not excluding (A) any of the foregoing taxes referred to in this paragraph (i) that, by the terms of the statute imposing such tax, expressly relieve the Lessee as a lessee from the payment of Taxes that it would otherwise be obligated to pay or indemnify as herein provided or (B) Taxes levied or imposed upon any indemnification payments (whether paid to an Indemnified Person, a taxing authority or otherwise) made pursuant to this Agreement.

(ii) Federal and Home State Taxes imposed on or measured by any fees or compensation received by any Indemnified Person other than payments made to the Lessor or the Lenders pursuant to the Participation Agreement (or any exhibits thereto);

(iii) Federal and Home State net income taxes of any holder of the Secured Note which in each case are payable to the respective taxing jurisdictions other than by reason (in whole or in part) of a relation or asserted relation of the taxing jurisdiction to the transactions contemplated hereby;

(iv) gift taxes;

(v) Federal or Home State inheritance taxes; and



(vi) any penalty or fine imposed with respect to the Federal income or state or local income or franchise tax liability of such Indemnified Person, but only if such penalty or fine does not relate to the circumstances of the transactions contemplated hereby, the tax consequences thereof or any Taxes indemnified hereunder; provided, however, that the foregoing exclusion described in (i) above shall not apply to any aggregate net increase (net of any readily calculable off-setting state and local tax benefits) in such Taxes imposed on the Lessor by state, local, and other taxing authorities in the United States.

In the case of any Taxes that are reported on a consolidated or combined basis by an Indemnified Person the amount of the indemnity or any payment by the Lessee in respect of such Taxes shall be computed with reference to the rules applicable to the consolidated or combined return of such Indemnified Person.

Lessee further agrees to pay on or before the time or times prescribed by law any taxes, payments in lieu of taxes, levies, imposts, duties, assessments, fees, charges and withholdings of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, imposed on the Lessee (or any affiliated or related group of which the Lessee is a member) under the laws of any jurisdiction which, if unpaid, might result in a lien other than a lien permitted hereunder upon the Units.

Lessee shall pay to an Indemnified Person all amounts due under this Section 6.1 within 30 days after the receipt of notice from the Indemnified Person or relevant taxing authority that such payment is due to the relevant taxing authority (but not before the date on which such payment is due to the relevant taxing authority), or, if the Indemnified Person so directs, the Lessee shall pay such amounts directly to the appropriate taxing authority.

Any payment by the Lessee hereunder shall be an amount which, after deduction of all taxes, assessments, fees and charges required to be paid by such Indemnified Person in respect of the receipt or accrual of such payment and after consideration of any deduction to which such Indemnified Person is entitled with respect to the payment or accrual of such Taxes in the year of such payment or accrual, shall be equal to the amount

of payment otherwise required hereunder.

If any Indemnified Person shall obtain a refund of any Taxes paid or reimbursed by Lessee from the taxing authority to which such Taxes were paid pursuant to this Section 6.1 such Indemnified Person shall pay to the Lessee the amount of such refund (not in excess of the amount previously paid or reimbursed by the Lessee), together with the amount of any interest received by such Indemnified Person on account of such refund, plus an amount equal to any tax benefit from any deduction received by such Indemnified Person solely as a result of any payment to the Lessee pursuant to this sentence, net of any tax detriment to such Indemnified Person attributable to such refund and such interest and net of any amounts due and owing by the Lessee under this Section 6.1; provided, however, that any disallowance of such refund or related tax benefit subsequent to the year of realization shall be treated as a payment of Taxes by such Indemnified Person and be subject to the provisions hereof and, provided, further, that an Indemnified Person shall have no obligation to make any payments hereunder so long as an Event of Default (or an event that with notice or passage of time or both would become an Event of Default) shall have occurred and be continuing.

If any Indemnified Person shall receive a written notification from a taxing authority of proposed Taxes for which an amount may be payable by Lessee in accordance with Section 6.1, such Indemnified Person shall notify Lessee of such Taxes promptly after receipt of such written notification from the applicable taxing authority and shall furnish Lessee with such related information known to such Indemnified Person as Lessee may reasonably request. If within 30 days after receipt of such notice from such Indemnified Person, Lessee shall deliver to such Indemnified Person (a) a written request that such Indemnified Person contest such Taxes, which written request shall be accompanied by an opinion of independent tax counsel that there appears to exist a reasonable basis for contesting such Taxes and (b) a written agreement of Lessee in form and substance satisfactory to such Indemnified Person, acknowledging the liability of Lessee to such Indemnified Person for such Taxes (if and to the extent that such Indemnified Person shall not prevail as to all matters involved in such contest) and for any liability, loss or expense that such Indemnified Person may incur as a result of contesting such Taxes, including, without limitation, all costs, expenses, losses, legal and accounting fees and disbursements, bonding fees, penalties and interest (an "Indemnified Claim"), then such Indemnified Person shall (after a reasonable determination by such Indemnified Person that the action to be taken will not result in a risk

of the sale, forfeiture or other loss of, or the imposition of a lien (other than a lien permitted hereunder) upon the Units or any part thereof) in good faith contest the validity, applicability or amount of such Taxes, by, in such Indemnified Person's sole discretion, either (a) resisting payment thereof, (b) not paying the same except under protest if protest is necessary and proper or (c) if payment is made, using reasonable efforts to obtain a refund in appropriate administrative or judicial proceedings. Within five days of any request therefor from such Indemnified Person, Lessee agrees to provide such Indemnified Person with an indemnity, satisfactory to such Indemnified Person, for the liability acknowledged in the written agreement referred to in the preceding sentence.

Such Indemnified Person, at its sole option, may choose to pursue or to forego any and all administrative appeals, proceedings, hearings and conferences with the relevant taxing authority with respect to such Indemnified Claim (unless and to the extent that pursuance of any such appeal, proceeding, hearing or conference shall be required to secure judicial remedies, in which case such Indemnified Person shall be required to pursue the same), but will (unless there shall be a settlement or compromise as permitted hereby) contest such Indemnified Claim in a court of competent jurisdiction selected by such Indemnified Person in its sole discretion. Such Indemnified Person shall, to the extent permitted by the applicable rules of any such court, afford Lessee the right to participate, at Lessee's expense, in any such contest before any such court. Such Indemnified Person shall also, if and to the extent it pursues any administrative remedies, permit Lessee to participate in any such administrative proceeding (if permitted by the relevant taxing authority) unless such Indemnified Person was subject to taxes, assessments, fees or charges for which it is not indemnified under this Section 6.1 by such taxing authority for any period under contest. Sole control over the conduct of the contest will reside in such Indemnified Person. If an Indemnified Person shall obtain a refund of all or any part of such Taxes, Lessee shall be paid the amount of such refund net of expenses and the taxes imposed with respect to such refund and, if in addition to such refund an Indemnified Person shall receive an amount representing interest, Lessee shall be paid that proportion of such interest that is fairly attributable to Taxes paid by Lessee prior to the receipt of such refund, provided, however, that such amounts shall not be payable (i) if an Event of Default (or an event that, with notice or passage of time, or both would become an Event of Default) shall have occurred and be continuing and (ii) before such time as Lessee shall have made all payments or indemnities then due under this Section 6.1, Lessee shall not be deemed

to be in default under any of the above-described indemnification provisions so long as it or an Indemnified Person shall diligently prosecute such contest and the nonpayment thereof does not, in the reasonable opinion of the Indemnified Person, adversely affect the title, property or rights of such Indemnified Person. Any Indemnified Person against whom a claim is made for any Taxes shall be released from its responsibility to contest such claim if it agrees not to seek indemnification in respect of the claim to be contested, provided, however, that such release with respect to Taxes for any given taxable period shall not affect the rights and obligations of an Indemnified Person and the Lessee in respect of such Taxes for any other taxable period.

Such Indemnified Person shall not enter into a settlement or other compromise with respect to, or otherwise concede, any Indemnified Claim (other than an Indemnified Claim that such Indemnified Person is not required to contest under this Section 6.1) without the written consent of Lessee, unless such Indemnified Person shall waive its right to be indemnified with respect to such Indemnified Claim under this Section 6.1.

The amount of any payment required to be made under this Section 6.1 by Lessee to or for the benefit of an Indemnified Person or by any Indemnified Person to Lessee shall be reasonably determined by such Indemnified Person, taking into account any increase or reduction in Taxes that is, in the judgment of such Indemnified Person, attributable to (i) the receipt or accrual by such Indemnified Person of any such payment by Lessee, (ii) the payment or accrual by such Lessee of any such payment to Lessee, (iii) the receipt or accrual by such Indemnified Person of any refund of such Taxes, and any interest on such refund, and/or (iv) the payment or accrual by such Indemnified Person of any such taxes, as the case may be; provided, however, that such Indemnified Person shall in no case be required to actually compute such increase or reduction in such tax liability but may make a reasonable estimate thereof. For the purpose of this Section 6.1, in determining whether an Indemnified Person is entitled to a deduction in any taxable year for any Taxes for which said Indemnified Person may, under applicable law, claim either a deduction or a tax credit or other benefit other than a deduction, such Indemnified Person shall be deemed not entitled to such a deduction if such Indemnified Person is precluded from claiming such a deduction by reason of having claimed a tax credit or other benefit other than a deduction with respect to such Taxes or any other taxes of a similar nature (whether or not such taxes are related to the transactions contemplated hereby) for such taxable period or a prior taxable period.

All computations required to be made by such Indemnified Person pursuant to this Section 6.1 shall be made (i) in accordance with the provisions hereof and (ii) on the assumption that such Indemnified Person is subject to or benefited by Federal and Home State taxes based on or measured by net income of such Indemnified Person at the highest statutory rate for such taxes then generally applicable with respect to such Indemnified Person, without allocation or apportionment. The other Taxes and the amount thereof that such Indemnified Person may be subject to or benefited by shall be reasonably estimated by such Indemnified Person.

All computations required to be made under this Section 6.1 shall be made reasonably by the Indemnified Person in question, and the results of such computations, together with a statement describing in reasonable detail the manner in which such computations were made, shall be delivered to Lessee in writing. Within 15 days following Lessee's receipt of such computations, Lessee may request that the accounting firm which regularly prepares such Indemnified Person's financial statements (at the expense of Lessee) verify whether such computations of the Indemnified Person are manifestly erroneous. If such firm shall determine that such computations are manifestly erroneous, such firm shall determine the appropriate computations. The computations of the Indemnified Person (or, if demanded by Lessee, as provided in the previous sentence, of an accounting firm, shall be final, binding and conclusive upon Lessee, and Lessee shall have no right to inspect the books, records, tax returns or other documents of or relating to such Indemnified Person to verify such computations or for any other purpose.

In the event any returns, statements, or reports with respect to Taxes other than (i) with respect to Federal, state or local income tax, or (ii) any tax to the extent measured in whole or in part by any fees or compensation paid to the Lessor or Lenders, or (iii) any other tax excluded from indemnity hereunder, are required to be made, Lessee will make such statements and reports in such manner as is consistent with the interest of the Lessor and the Lenders in such Units.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this Section 6.1, the Lessor hereby authorizes the Lessee to act in the name of the Lessor and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a

result of, or incident to, any action by the Lessee pursuant to this authorization.

In the event that the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this Section 6.1, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

6.2. Income Tax Indemnification. Lessor (or the consolidated federal taxpayer group, if any, of which the Lessor is a part) intends to claim, for federal income tax purposes (i) an interest deduction ("Interest") equal in any period to interest accrued under the Lessor's method of accounting on any loan secured by the Units, (ii) depreciation deductions in each taxable year of the Lessor ("Depreciation") based on the Purchase Price of the Units, the most advantageous methods, useful life, and averaging convention permitted by § 167(m) of the Internal Revenue Code of 1954, as amended (the "Code"), for new property described in Asset Guideline Class 00.25, and a net salvage value of zero, (iii) an investment tax credit ("ITC") under § 38 of the Code equal to 10% of the Purchase Price of the Units, and (iv) not to recapture any portion of the Depreciation or ITC prior to the expiration of this Lease. If for any reason prior to a sale at or after the expiration of the term for any Unit as set forth in § 4.1 of this Lease, there shall be a disallowance, elimination, reduction, disqualification, or recapture, in whole or in part, of the Depreciation, the ITC, or the Interest (hereinafter, a "Loss") with respect to such Unit, then the Lessee shall compensate the Lessor for such Loss. For purposes of definition and explanation, the amount payable by reason of any such Loss shall be equal to an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amount under the laws of any foreign, federal, state, or local government or taxing authority, shall be equal to the sum of the amount of any additional tax liability of the Lessor caused by such Loss plus any interest and Additions to Tax which are payable by the Lessor as a result of the Loss. The term "Additions to Tax" shall mean those penalties imposed under federal, state, and local income tax laws and those payments described in §§ 6651(a)(3), 6653, and 6655 of the Code and corresponding provisions of foreign, state, and local income tax laws. Any payments under this section shall be due and payable on the later of (a) 30 days following the end of the Lessor's taxable year within which the Loss occurs, or (b) 15 days after notice from the Lessor that such payment is due.

Notwithstanding the foregoing provisions, the Lessee

shall have no obligation to compensate the Lessor for any Loss arising by reason of (i) the Lessor's failure to have sufficient federal income tax liability to take advantage of the ITC or Depreciation in any taxable year, (ii) the failure of the Lessor timely to claim ITC or Depreciation on its federal income tax return, or (iii) a sale, exchange, or other voluntary disposition of the Unit (not including any disposition due to theft, destruction, damage, condemnation, confiscation, or other casualty or involuntary disposition), provided such voluntary disqualifying disposition occurs while no Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default has occurred and is continuing under this Lease

## 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

### 7.1. Definitions of Casualty Occurrence; Payments.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or until such Unit is returned pursuant to § 14 or 17 hereof, or any Unit shall have been returned to the Builder pursuant to the patent indemnity provisions of the Purchase Agreement or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof (such occurrences being hereinafter called "Casualty Occurrences"), the Lessee shall promptly and fully notify the Lessor and the Lenders with respect thereto. Except as provided in § 7.4 hereof, on the next succeeding Rental Payment Date (each such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as defined in § 7.5 hereof) of any such Unit as of such Casualty Payment Date, plus the rental in respect of such Unit accrued as of such Rental Payment Date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue and the term of this Lease as to such Unit shall terminate.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not therefore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the

term of this Lease, in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor, as the Casualty Value therefor, an amount equal to 20% of the Purchase Price of such Unit. All payments received by the Lessor or the Lessee from the United States Government or any other governmental entity for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing and otherwise shall be paid over to, or retained by, the Lessor and be credited against amounts owed hereunder by the Lessee.

Prior to the payment of Casualty Value for a Unit which has suffered a Casualty Occurrence, all insurance proceeds and condemnation payments in respect thereof shall be paid to the Lessor as a credit against amounts owed to the Lessor hereunder. Following any payment of Casualty Value by the Lessee, the Lessee shall be entitled to receive and retain for its own account all condemnation payments in respect of such Unit. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, and the Lessee shall have paid the Casualty Value thereof, then, upon notice to the Lessor, the Lessee shall dispose of such Unit as agent for the Lessor, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value previously paid to the Lessor, and the balance of such proceeds shall be promptly paid to the Lessor.

7.2. Requisition Not Constituting a Casualty Occurrence. In the event of the requisition for use (i) by the United States Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the second paragraph of § 7.1 hereof) or (ii) by any other governmental entity which does not result in a loss of possession by the Lessee for a period of 90 consecutive days, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government or any other governmental entity for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided that if an Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall



have occurred and be continuing all such payments shall be paid over to or retained by Lessor as a credit against amounts owed to it hereunder.

7.3. Lessee to Retain Units Suffering a Casualty Occurrence. Provided that the Lessee has previously paid the Casualty Value of a Unit to the Lessor, such Unit and any proceeds thereof shall be retained by the Lessee and the Lessee shall thereupon be vested with all rights, title and interest of the Lessor to such Unit and any proceeds thereof.

7.4. Payments After Expiration of Lease. If the date upon which the payment by the Lessee in § 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite the Casualty Payment Date in Appendix B next succeeding the actual date of such Casualty Occurrence, or if there is no such Casualty Payment Date, the last Casualty Payment Date; but in no event shall such amount be less than the Casualty Value (as defined in paragraph 4.3 of the Security Agreement) as of such Casualty Payment Date.

7.6. No Release. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.7. Insurance To Be Maintained. (1) The Lessee will at all times prior to the return of the Units to the Lessor at its own expense, (i) cause to be carried and maintained public liability insurance with respect to third party personal injury and property damage in amount not less than \$2,000,000 per person, per occurrence and for property damage and (ii) cause to be carried and maintained casualty insurance in respect of the Units at the time subject hereto in an amount with respect to each Unit not less than the Casualty Value of such Unit and with a minimum per occurrence limit of \$2,000,000. The Lessee will carry such insurance for such risks, with such deductibles and with such insurance companies, satisfactory to the Lessor and the Lenders and in any event consistent with prudent industry practice and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment

owned or leased by it similar in nature to the Units. The proceeds of any such insurance shall be payable to the Lenders and the Lessor and, so long as there is no Event of Default hereunder, to the Lessee, as their respective interests may appear, so long as the indebtedness, if any, evidenced by the Security Agreement shall not have been paid in full, and thereafter to the Lessor, and, so long as there is no Event of Default hereunder, the Lessee as their respective interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancellation, expiration or material change in coverage to the Lessor and the Lenders, (ii) name the Lessor and the Lenders as additional named insureds as their respective interests may appear and (iii) waive any right to claim any premiums or commissions against the Lessor and the Lenders. In the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Lessor and the Lenders in such policies the insurance shall not require contributions from other policies held by the Lessor or the Lenders and shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Lenders, respectively) and shall insure the Lessor and the Lenders regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Lenders, respectively). Prior to the Closing Date, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Lessor and the Lenders certificates issued by the insurer(s) for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the certificate upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in § 19 hereof.

7.8. Insurance Proceeds, Condemnation Payments and Other Proceeds. If the Lessor shall receive (directly or from the Lenders) any insurance proceeds, condemnation payments or other proceeds in respect of any Unit suffering a Casualty

Occurrence, the Lessor shall pay such proceeds or payments to the Lessee up to the amount of the Casualty Value thereof paid by Lessee and shall retain the balance; provided, that if an Event of Default (or an event which with the lapse of time or the giving of notice or both would become an Event of Default) shall have occurred and be continuing or the Lessee shall not have made payment of the Casualty Value thereof, and accrued rentals in respect of such Unit, to the Lessor, the Lessor shall retain any such proceeds or payments in satisfaction of amounts owed to the Lessor. All insurance proceeds received by the Lessor (directly or from the Lenders) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

7.9. Economic Obsolescence. In the event that the Lessee shall, in its reasonable judgment, determine that the Units have become surplus to its need or obsolete in the Lessee's business, the Lessee shall have the right, at its option and on at least 120 days' prior written notice to the Lessor and the Lenders, to terminate (a "Termination") this Lease as to all of the Units as of any Rental Payment Date on or after June 1, 1986, specified in such notice (the "Termination Date"); provided, however, that (i) no Event of Default or other event which after the lapse of time or notice or both would become an Event of Default shall have occurred and be continuing and (ii) on the Termination Date each Unit shall be in the same condition as if being redelivered pursuant to § 14 hereof.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of all Units, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date, unless the Lessee shall have revoked its option to terminate this Lease, the Lessor shall sell all Units for cash to the bidder who shall have submitted the highest bid prior to the Termination Date, shall warrant to such bidder that the title to such Units shall be free and clear of all liens, claims and encumbrances and shall covenant to discharge all liens, claims and encumbrances arising from, through or under the Lessor. The total sale price realized at such sale shall be applied to the prepayment of the Indebtedness (as such term is defined in the Security Agreement)

in accordance with the Security Agreement and any balance shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor (i) the excess, if any, of the Termination Value for each Unit computed as of such date over the sale price of such Unit after the deduction of all expenses incurred by the Lessor in connection with such sale and (ii) the rental payment due on such Termination Date. The Termination Value of each Unit as of the payment date of which payment is to be made shall be the Casualty Value as of such date plus an amount equal to the prepayment premium, if any, payable pursuant to the Security Agreement on such date in respect of the Indebtedness (as such term is defined in the Security Agreement) to be prepaid by the Lessor on such date. In no event shall the aggregate amount retained by the Lessor and received by the Lessor as aforesaid be less than the Termination Value.

If no sale shall occur on the date scheduled therefor as provided above, this Lease shall continue in full force and effect without change unless and until the Lessee pays to the Lessor the Termination Value of each Unit and returns each Unit to the Lessor pursuant to § 14 hereof; provided, however, that this Lease shall not terminate as to any Unit unless the Indebtedness in respect of all Units is prepaid on the Termination Date pursuant to the Security Agreement.

In the event of any such sale and the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of the Units on each Rental Payment Date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

If the Lessee shall exercise its option to terminate, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given 90 days after the termination notice is given to the Lessor, elect to retain the Units, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor; provided, however, that such written notice shall be effective and this Lease shall

not terminate unless the Lessor shall first have deposited with the Lenders sufficient funds to prepay the Indebtedness on the Terminate Date pursuant to the Security Agreement, together with all accrued interest and applicable prepayment premium. In the event the Lessor shall so elect to retain the Units, the Lessee shall deliver the Units to the Lessor in accordance with the provisions of § 14 hereof.

#### 8. REPORTS.

On or before January 31 in each year, commencing with the calendar year 1982, the Lessee will furnish to the Lessor and the Lenders an accurate statement (a) setting forth as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the Security Agreement, the total number, description and identification numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Lenders may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5.1 hereof and by the Security Agreement have been preserved or replaced, (c) stating that the Lessee is in compliance under the Lease and has performed or has caused to be performed the required maintenance of the Units and that no event has occurred which with the lapse of time or notice or both would constitute an Event of Default and (d) further identifying those Units to which the Lessee has made additions and accessions pursuant to § 11.2 of this Lease and describing such additions and accessions and the cost thereof. The Lessor and any Lender shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or such Lender may request during the continuance of this Lease.

#### 9. DISCLAIMER OR WARRANTIES; WARRANTY OF TITLE

THE LESSEE ACCEPTS THE EQUIPMENT AS-IS AND THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR, EXCEPT AS SET FORTH IN THE NEXT

PARAGRAPH, AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of the Purchase Agreement; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Lenders based on any of the foregoing matters.

The Lessor warrants that, upon its leasing of the Units to the Lessee pursuant to this Lease, title to the Units shall be of the same quality as was conveyed to the Lessor by the Builder. The Lessor covenants that, during the term of this Lease, or during any renewal term thereof, the Lessor shall not create, suffer or permit any liens or encumbrances on the Units in favor of any person claiming by, through or under the Lessor (other than the Lenders or the Lessee) and, should any such liens or encumbrances arise during the term of this Lease or during any renewal term thereof, the Lessor shall promptly discharge all such liens or encumbrances.

## 10. LAWS AND RULES

10.1. Compliance. The Lessee agrees, for the benefit of the Lessor and the Lenders, to comply in all respects (including, without limitation, with respect to the use,

maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, after written notice to the Lessor and the Lenders, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Lenders, adversely affect the property or rights of the Lessor or the Lenders under this Lease or under the Security Agreement.

10.2. Reports by Lessee. The Lessee agrees to prepare and deliver to the Lessor and the Lenders within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Lenders) any and all reports with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Lenders of the Units or the leasing thereof to the Lessee. The Lessor agrees to inform the Lessee of any request for such reports received by the Lessor.

## 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the interchange rules of the American Association of Railroads or other applicable regulatory body, and in the same condition as other similar equipment owned or leased by the Lessee.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect

the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of its agreements contained in 11.2(1) hereof, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or use of such Unit in railroad interchange, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Agreement and except for liens arising by, through or under the Lessor) shall immediately be vested in the Lessor and the Lenders as their respective interests may appear in the Unit itself.

## 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold the Lessor and the Lenders and any assignee thereof, and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, expenses, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Lease, the Purchase Agreement, the Security Agreement or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Lessor, the Lenders or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or death of any person or any damage to or loss of property on or near the Units or



in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except that the Lessee shall not indemnify an Indemnified Person to the extent any such violation arises from the gross negligence, misconduct or default of such Indemnified Person; or (vii) any claim arising out of any of the Lessor's obligations under the Assignment or the Lenders' retention of a security interest under the Security Agreement or the Assignment or the Participation Agreement, except that the Lessee shall not indemnify an Indemnified Person to the extent such claim arises from the gross negligence, misconduct or default of such Indemnified Person. The Lessee shall be obligated under this § 12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any indemnification payment under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written

notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 12 by the Lessee, the Lessee shall be subrogated to any right of such Indemnified Person (except where the Lessee is also indemnifying a person against whom the Indemnified Person has rights) in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made. Nothing in this § 12.1 shall constitute a guarantee by the Lessee of the Indebtedness of the Lessor under the Security Agreement or a guarantee of the residual value of any Unit.

12.2. Indemnification of the Lessor and the Lenders. The Lessee further agrees to indemnify, protect and hold harmless the Lessor and the Lenders, as third party beneficiaries hereof, from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Lenders or the Lessor because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or any claim known to the Lessee from which liability may be charged against such Builder hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

### 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur (whatever

the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court, or any order, rule or regulation of any governmental body):

(a) default shall be made in payment of any amount provided for in § 3, 7 or 16 hereof, which default shall continue for a period of 15 days;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(c) the Lessee shall fail to maintain insurance on the Equipment as required by Section 7 hereof;

(d) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, the Purchase Agreement Assignment or the Consent and such default shall continue for 30 days;

(e) any representation or warranty made by the Lessee herein or in the Participation Agreement or in any certificate or statement furnished to the Lessor or the Lenders pursuant to or in connection with any such agreements, proves untrue in any material respect as of the date of issuance or making thereof;

(f) The Lessee shall

(1) be generally not paying its debts as they become due,

(2) file, or consent by answer or otherwise to the filing against it of, a petition in bankruptcy or to take advantage of any bankruptcy or insolvency act or law of any jurisdiction,

(3) make an assignment for the benefit of its creditors,

(4) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property,

(5) be adjudicated a bankrupt or insolvent  
or

(6) take action for the purpose of  
effectuating any of the foregoing;

(g) a court or governmental authority of  
competent jurisdiction shall enter an order appointing,  
without the consent of the Lessee, a custodian, receiver,  
trustee or other officer with similar powers with respect  
to the Lessee or any substantial part of its property,  
or constituting an order for relief under any bankruptcy  
or insolvency law, or approving a petition for the relief,  
reorganization or arrangement of Lessee or any other petition  
in bankruptcy or for liquidation or to take advantage of  
any bankruptcy or insolvency law of any jurisdiction or  
ordering the dissolution, winding up or liquidation of  
Lessee or if any such petition shall be filed against Lessee  
and such petition shall not be dismissed within 60 days;

(h) an event of default set forth in Article  
XIII of the Security Agreement shall have occurred and  
be continuing arising out of any default by the Lessee  
in performing any of its obligations hereunder;

(i) default shall be made with respect to any  
evidence of indebtedness or with respect to any liability  
for borrowed money, in excess of \$100,000 of the Lessee  
or the performance of any other obligation incurred in  
connection with any such indebtedness or liability if the  
effect of such default is to permit the holder or obligee  
thereof (or a trustee on behalf of such holder or obligee)  
to cause any such indebtedness to become due prior to its  
stated maturity;

(j) any evidence of indebtedness or any liability  
for borrowed money, in excess of \$100,000 of the Lessee  
shall not be paid as and when due and payable (including  
any applicable grace period);

(k) any event shall occur which permits any  
person (other than the holders of common stock) to elect  
a majority of the members of the Board of Directors or  
other governing body of the Lessee;

(l) an Event of Default shall occur under the  
Restated Lease of Railroad Equipment, dated as of January  
1, 1981, between the Lessee and the Lessor Parent;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify, (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, (such present value to be computed on the basis of a 10% per annum discount, compounded monthly from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated) over the then present value of the fair market rental (determined (at the Lessee's expense) by an independent appraiser selected by the Lessor) to be obtainable for each Unit during such period or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including attorneys' fees, in addition thereto

which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount determined by an independent appraiser selected by the Lessor (at the Lessee's expense) to be the fair market sales value of such Unit at such time; provided, however, that the Lessee shall pay in any event an amount not less than that which is owed to the Lenders under the Security Agreement; provided, further, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit shall demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default. The Lessee agrees to furnish the Lessor and the Lenders, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying

such condition and the nature and status thereof. For the purposes of this § 13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 13 hereof or pursuant to Article XIII of the Security Agreement, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks as the Lessor reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) cause the same to be transported to any reasonable place within the continental United States as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction

in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in the manner set forth in § 11.1 hereof, insure the Units in accordance with the provisions of § 7.7 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease whether as a result of an Event of Default or otherwise shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 20 days after such termination, the Lessee shall in addition pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the Fair Market Rental (as determined in accordance with Section 30 hereof) of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

14.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 14, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

## 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor upon prior written consent of the Lessee, which consent shall not be unreasonably withheld. The Lessee hereby consents to the assignment of this Lease pursuant the Assignment.

15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units. (1) So long as (a) no Event of Default exists hereunder and (b) the Lessee is complying with the provisions of the Consent, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Agreement. The Lessee agrees to use the Units solely within the United States of America except that the Lessee may use the Units in Alberta, Canada if but only if (i) the use of such



Units in Alberta, Canada does not involve the predominant use thereof outside the United States within the meaning of Section 48(a)(2) of the Internal Revenue Code of 1954, as amended, and (ii) not more than 45% of the Units subject to this Lease are located in Alberta, Canada at any one point in time. Without the prior written consent of the Lessor and the Lenders, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as provided in paragraph (2) below of this § 15.2. The Lessee, at its own expense, will forthwith pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Lenders or resulting from claims against the Lessor or the Lenders not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Lessor and the Lenders) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Lenders or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the Security Agreement and without affecting the Lessee's obligations hereunder which shall continue in full force and effect; provided, however, that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code; and provided further, that the Lessee shall not without the Lessor's prior written consent assign, sublease, or permit the assignment, sublease or use of the Units by any person (i) who shall then be in default under any instrument evidencing indebtedness or with respect to any liability for borrowed money or for the

deferred purchase price of property or (ii) who shall then be engaged in any proceedings for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions of indebtedness. The Lessee may receive and retain compensation for the use of any of the Units from railroads or other entities so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be expressly subject and subordinate to the rights and remedies of the Lenders under the Security Agreement and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder and shall provide that, upon the occurrence of an Event of Default hereunder, all payments to be made thereunder shall be payable to the Lessor or its assignee; provided further, however, that (a) so long as no Event of Default exists under this Lease and (b) the Lessee is complying with the terms of the Consent, the sublessee shall be entitled to the possession of the Units included in the sublease and the use thereof.

15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation. With the prior written consent of the Lessor, the Lessee may transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease; provided, however, that the net worth of such assignee or transferee (consolidated with its parent) is equal to or greater than that of the Lessee (on a consolidated basis) immediately following such merger, consolidation or acquisition.

#### 16. RETURN OF UNITS UPON EXPIRATION OF TERM

Upon the expiration of the term of this Lease or any prior termination of this Lease for any reason, Lessee shall return each Unit to Lessor in good order and repair, excepting only reasonable wear and tear, by causing all Units to be moved, at Lessee's expense, onto such tracks as Lessor may reasonably

designate, and by keeping all such Units for a period of 90 days, without charge to Lessor for rent or storage during the first 30 days. During the latter 60 days Lessee shall deliver invoices of others for such storage and any applicable transportation charges of others and such invoices shall be paid by Lessor. Any Units not delivered in accordance with this § 16 shall continue to be subject to all of the rights and duties of the parties set forth in this Lease. During any such storage period the Lessee will insure the Units in accordance with the provisions of § 7.7 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 16 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect required for a third party purchaser or third party lessee to immediately operate such Unit without further inspection, repair, replacement, alterations or improvements (excluding third party peculiar requirements for compatibility with then existing third party products, equipment or facilities) under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction, and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances, but in any event in no less manner than is set forth in § 11.1 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All net amounts earned in respect of the Units after the expiration of the original term or any extended term hereof shall belong to the Lessor, and shall be paid over forthwith to the Lessor.

## 17. RECORDING

The Lessee, at its own expense, will cause this Lease, the Security Agreement and the Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and wherever advisable or necessary in Canada so as to protect the lien of the Lenders pursuant to the Security Agreement. The Lessee will further cause this Lease and/or appropriate financing statements or continuation statements to be filed and recorded, and, from time to time when required, refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Texas and (and, if the Lessee changes its chief place of business, in any other state) in any other state of the United States of America or the District of Columbia where filing is necessary, or is reasonably requested by the Lessor or the Lenders, for the purpose of proper protection, to the satisfaction of counsel to the Lessor and the Lenders, of their interests and rights under this Lease and the Security Agreement, respectively, for the purpose of carrying out the intention of this Lease and the Security Agreement, respectively. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Security Agreement. The Lessee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Lenders for the purpose of proper protection, to their satisfaction, of the Lenders' and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Agreement and the Assignment; and the Lessee will promptly furnish to the Lenders and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lenders and the Lessor.

## 18. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at 17.75% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

## 19. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at 17.75% per annum shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder.

## 20. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered in person or when mailed, first class, postage prepaid, addressed as follows:

(a) if the the Lessor, at P.O. Box 255415, 1704 Main Street, Dallas, Texas 75265, Attention President;

(b) if to the Lessee, at P.O. Drawer 191, 301 N. Kilgore, Kilgore, Texas 75662, Attention of Ruben S. Martin III; and

(c) if to the Guarantor, at P.O. Drawer 191, 301 N. Kilgore, Kilgore, Texas 75662,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

## 21. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## 22. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect

thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

#### 23. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Lenders, the Builder and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

#### 24. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Lenders pursuant to the Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

#### 25. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Texas; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

#### 26. IMMUNITIES; NO RECOURSE

No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

27. AGREEMENTS FOR BENEFIT OF LESSOR'S ASSIGNS

All rights of the Lessor hereunder (including, but not limited to, its rights under §§ 6, 7, 9, 12, 13, 14 and 16 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Lenders).

28. TERM LESSOR

Whenever the term Lessor is used in this Lease it shall apply and refer to the Lessor and any assignee of the Lessor (including, so long as any Indebtedness under the Security Agreement or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Lenders).

29. PRIOR LEASE

The Prior Lease is wholly amended and restated hereby and shall hereafter be null and void except with respect to those provisions thereof which by their terms survive termination of the Prior Lease.

30. RENEWAL OPTION; RIGHT OF REFUSAL

30.1. Renewal for Successive Period. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, (i) the Lessee may, by written notice delivered to the Lessor not less than 180 days nor more than 270 days prior to the end of the Primary Term of this Lease in respect of the Units still subject to this Lease, elect to extend such Primary Term of this Lease in respect of all but not less than all the Units then covered by this Lease for a period of three years (the "extended term") commencing on the scheduled expiration of such Primary Term of this Lease. The amount of rentals for the extended lease term shall be at a "Fair Market Rental" payable in quarterly payments, in advance, on each Rental Payment Date in each year of such extended term. In the event of any such renewal, the Casualty Value payable in respect of a Casualty Occurrence involving any Unit shall be determined by mutual consent of the Lessor and the Lessee, failing which, such Casualty Value shall be determined in the manner set forth for the determination of Fair Market Rental in § 30.2(a) hereof.

30.2. Determination of Fair Market Rental.

(a) Fair Market Rental shall be determined for the extended term of this Lease on the basis of, and shall

be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease on the assumption that the Units are in the condition required by § 16 hereof, and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

(b) If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 90 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 55 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the



determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be divided equally between the Lessee and the Lessor.

30.3. Right of Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, and provided further that the Lessee has not notified the Lessor of its intention to extend the term of this Lease as described in the first paragraph of this § 30, then in the event the Lessor elects to sell any Units to third parties at the expiration of the original or, if extended, the extended term of this Lease, the Lessee shall be given written notice of such intention to sell such Units prior to the expiration of such term. In the event that the Lessor shall receive, at any time within 120 days following the expiration of such original or extended term, as the case may be, a bona fide offer in writing from another party unrelated to the Lessee to purchase such Units and the Lessor elects to sell such Units pursuant to such offer at the expiration of such term of this Lease, the Lessor shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party to the Lessor. The Lessee shall have the right and option, exercisable as provided in the next succeeding sentence of this paragraph, to purchase such Units at the price at which such Units are proposed to be sold to the other party payable in accordance with the terms and conditions of payment offered by the other party. Within 10 business days of receipt of notice from the Lessor, the Lessee may exercise such purchase right by delivery to the Lessor of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Lessor, or (ii) 90 days after the expiration of such original or extended term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase such Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase.

Upon payment of the purchase price of any Unit (or such other purchase price as is provided for herein), pursuant to an exercise by the Lessee of its right to purchase such Units, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Units such as will transfer to the Lessee such title to such Units as the Lessor derived from the Lenders, free and clear of all liens, security interests

and other encumbrances arising through the Lessor. Notwithstanding the foregoing, if any Units so purchased are to be sold to the Lessee under a conditional sale agreement, the Lessor shall have the right to retain a security interest in such Units until such time as all payments in respect thereof have been made.

### 31. GUARANTEE OF GUARANTOR

In consideration of inducing the Lessor to enter into this Lease, the Guarantor hereby unconditionally guarantees the due and punctual performance of all obligations of the Lessee (including without limitation the payment of money and the specific performance of such obligations) under this Lease, the Consent, and the Participation Agreement and the transactions contemplated hereby and thereby (all such obligations called "Obligations"). In the event that the Lessee fails to perform any of the Obligations at the time such Obligation is required to be performed under the Lease, the Consent, or the Participation Agreement, the Guarantor shall forthwith perform or cause to be performed such Obligation.

The Guarantor agrees that the Obligations may be extended, altered or modified, in whole or in part, without notice or further assent from him, and that he will remain bound hereunder notwithstanding any extension, alteration or modification of any Obligation.

Except in those cases in which notice is expressly provided for in this Lease, the Guarantor waives presentation to, demand of payment or performance from and protest to the Lessee of any of the Obligations, and also waives notice of protest for nonpayment or nonperformance of any of the Obligations both monetary and nonmonetary in nature. The obligations of the Guarantor hereunder shall not be affected by (i) the failure of the Lessor or the Lenders to assert any claim or demand or to enforce any right or remedy against the Lessee under the provisions of this Lease, the Consent, or the Participation Agreement or any other agreement or otherwise; (ii) any extension or renewal of any thereof; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Lease or of any other agreement; (iv) the failure of the Lessor or the Lenders to exercise any right or remedy against any other guarantor of the Obligations; or (v) the failure of the Guarantor to receive notice of any extension, alteration or modification of any Obligation, this Lease, the Consent, or the Participation Agreement or any future agreement relating to the Obligations.

The Guarantor further agrees that this undertaking constitutes a guarantee of payment when due (or performance when required, as the case may be) and not of collection.

The obligations of the Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including without limitation any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any Obligation, this Lease, the Consent, or the Participation Agreement or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Lessor or the Lenders to assert any claim or demand or to enforce any remedy under this Lease or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, as the result of actual or alleged force majeure, commercial impracticability or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Guarantor or which would otherwise operate as a discharge of the Guarantor as a matter of law.

The Guarantor further agrees that his undertakings hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations which are monetary in nature is rescinded or must otherwise be restored by the Lessor or the Lenders upon the insolvency, winding-up or reorganization of the Lessee or otherwise. In furtherance of the foregoing and not in limitation of any other right which the Lessor or the Lenders may have at law or in equity against the Guarantor by virtue hereof, upon failure of the Lessee to make any payment on any of the Obligations which are monetary in nature when and as the same shall become due as required under this Lease, the Consent, or the Participation Agreement, the Guarantor hereby promises, and will, upon receipt of written demand by the Lessor or the Lenders, forthwith pay, or cause to be paid, to the Lessor or the Lenders in cash an amount equal to all such Obligations to the Lessor or the Lenders, as the case may be. In addition, in furtherance of the foregoing and not in limitation of any other right which the Lessor or the Lenders may have at law or in equity against the Guarantor by virtue hereof, upon failure of the Lessee to perform any of the Obligations which are nonmonetary in nature when the same shall be required to be performed under this Lease, the Consent, or the Participation Agreement, the Guarantor hereby promises and will, upon receipt

of written demand by the Lessor or the Lenders, forthwith perform strictly in accordance with the terms of this Lease, the Consent, or the Participation Agreement, or cause to be so performed, for the Lessor and the Lenders all such Obligations required to be performed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

[Seal]

Attest: Margaret Martin  
Secretary  
Title

MARTIN GAS SALES, INC.

By Robert Martin, Jr.  
Title President

[Seal]

Attest:

Augustine Bauckman  
Title V.P.

MERCANTILE TEXAS CAPITAL  
CORPORATION

By Corey [Signature]  
President

Witness:

Paula Lawrence

By Rubin S. Martin, Jr.  
RUBIN S. MARTIN, JR.

# APPENDIX A TO LEASE

<u>Type</u>	<u>Serial Numbers</u>	<u>Builder's Specifi- cation</u>	<u>Builder's Plant</u>	<u>Quantity</u>
Molten Sulfur Tank Car	434549 434554 through 434558 434560 434562 through 434613	111A100W-3	Dallas, Texas	59

<u>Lessee's Identification Numbers</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Time of Delivery</u>
MGSX 100 MGSX 105 through MGSX 107 MGSX 109 MGSX 111 through MGSX 164	\$52,500	\$3,097,500	January 1981- February 1981

# APPENDIX B TO LEASE

## Casualty Value

Casualty Payment Date

Percentage of  
Purchase Price

3/ 1/1981	99.6828004
4/ 1/1981	107.7026034
5/ 1/1981	108.2476315
6/ 1/1981	108.1356480
7/ 1/1981	108.3368410
8/ 1/1981	108.5391058
9/ 1/1981	108.7427140
10/ 1/1981	108.8832657
11/ 1/1981	109.0244010
12/ 1/1981	109.1661161
1/ 1/1982	109.2442753
2/ 1/1982	109.3224230
3/ 1/1982	109.4005496
4/ 1/1982	109.4786453
5/ 1/1982	109.5530591
6/ 1/1982	109.5890149
7/ 1/1982	109.6210595
8/ 1/1982	109.6526144
9/ 1/1982	109.6836648
10/ 1/1982	109.6914540
11/ 1/1982	109.6985034
12/ 1/1982	109.7047931
1/ 1/1983	109.6875652
2/ 1/1983	109.6693358
3/ 1/1983	109.6500848
4/ 1/1983	109.6297015
5/ 1/1983	109.5980552
6/ 1/1983	109.5490674
7/ 1/1983	109.4884251
8/ 1/1983	109.4263176
9/ 1/1983	109.3627197
10/ 1/1983	109.2792256
11/ 1/1983	109.1940221
12/ 1/1983	109.1070811
1/ 1/1984	108.9909942
2/ 1/1984	108.8909453
3/ 1/1984	104.5984529
4/ 1/1984	102.4939970
5/ 1/1984	102.3636590
6/ 1/1984	102.2310945
7/ 1/1984	102.0810533
8/ 1/1984	101.9285789
9/ 1/1984	101.7736352
10/ 1/1984	101.6009691
11/ 1/1984	101.4256214
12/ 1/1984	101.2475530
1/ 1/1985	101.0515081
2/ 1/1985	100.8525246
3/ 1/1985	100.6505605
4/ 1/1985	100.4455733
5/ 1/1985	100.2256265
6/ 1/1985	100.0024617
7/ 1/1985	99.7641402
8/ 1/1985	99.5224013

# Casualty Payment Date

# Percentage of Purchase Price

9/ 1/1985	99.2771976
10/ 1/1985	99.0165874
11/ 1/1985	98.7523771
12/ 1/1985	98.4843065
1/ 1/1986	98.2006407
2/ 1/1986	97.9130433
3/ 1/1986	93.4400101
4/ 1/1986	91.1529979
5/ 1/1986	90.8448974
6/ 1/1986	90.5325705
7/ 1/1986	90.2075759
8/ 1/1986	89.8781635
9/ 1/1986	89.5442740
10/ 1/1986	89.1974631
11/ 1/1986	88.8459775
12/ 1/1986	88.4897549
1/ 1/1987	88.1203477
2/ 1/1987	87.7458997
3/ 1/1987	87.3666450
4/ 1/1987	86.9822171
5/ 1/1987	86.5879917
6/ 1/1987	86.1885142
7/ 1/1987	85.7790600
8/ 1/1987	85.3641711
9/ 1/1987	84.9437763
10/ 1/1987	84.5131457
11/ 1/1987	84.0768202
12/ 1/1987	83.6347245
1/ 1/1988	83.1821256
2/ 1/1988	82.7235608
3/ 1/1988	78.0775009
4/ 1/1988	75.6153774
5/ 1/1988	75.1377644
6/ 1/1988	74.6538588
7/ 1/1988	74.1629030
8/ 1/1988	73.6654815
9/ 1/1988	73.1615093
10/ 1/1988	72.6502254
11/ 1/1988	72.1322111
12/ 1/1988	71.6073777
1/ 1/1989	71.0749608
2/ 1/1989	70.5355380
3/ 1/1989	69.9890172
4/ 1/1989	69.4353051
5/ 1/1989	68.8770273
6/ 1/1989	68.3114035
7/ 1/1989	67.7410572
8/ 1/1989	67.1632060
9/ 1/1989	66.5777509
10/ 1/1989	65.9873125
11/ 1/1989	65.3891046
12/ 1/1989	64.7830250
1/ 1/1990	64.1716905
2/ 1/1990	63.5523116
3/ 1/1990	62.9247824
4/ 1/1990	62.2889955
5/ 1/1990	61.6508356
6/ 1/1990	61.0042780
7/ 1/1990	60.3552055
8/ 1/1990	59.6975915
9/ 1/1990	59.0313237
10/ 1/1990	58.3622813
11/ 1/1990	57.6844344
12/ 1/1990	56.9976677
1/ 1/1991	56.3078564
2/ 1/1991	55.6089761

Casualty Payment Date

Percentage of  
Purchase Price

3/ 1/1991	54.9008706
4/ 1/1991	54.1834758
5/ 1/1991	53.4679701
6/ 1/1991	52.7430150
7/ 1/1991	52.0207157
8/ 1/1991	51.2982265
9/ 1/1991	50.5472217
10/ 1/1991	49.8080016
11/ 1/1991	49.0589178
12/ 1/1991	48.2998392
1/ 1/1992	47.5428625
2/ 1/1992	46.7757349
3/ 1/1992	45.9983213
4/ 1/1992	45.2104844
5/ 1/1992	44.4296304
6/ 1/1992	43.6382330
7/ 1/1992	42.8536960
8/ 1/1992	42.0584911
9/ 1/1992	41.2524748
10/ 1/1992	40.4530464
11/ 1/1992	39.6426734
12/ 1/1992	38.8212078
1/ 1/1993	38.0060447
2/ 1/1993	37.1796469
3/ 1/1993	36.3418610
4/ 1/1993	35.4925353
5/ 1/1993	34.6548291
6/ 1/1993	33.8054780
7/ 1/1993	32.9676418
8/ 1/1993	32.1180529
9/ 1/1993	31.2565500
10/ 1/1993	30.4062884
11/ 1/1993	29.5439959
12/ 1/1993	28.6653099
1/ 1/1994	27.7934025
2/ 1/1994	26.9850194



APPENDIX C TO LEASE

CERTIFICATE OF ACCEPTANCE

This CERTIFICATE OF ACCEPTANCE, dated as of \_\_\_\_\_, 1981, executed and delivered by Martin Gas Sales, Inc., a Texas corporation ("Lessee"), to Mercantile Texas Capital Corporation ("Lessor").

W I T N E S S E T H:

WHEREAS, Lessor and Lessee have heretofore entered into that certain Lease of Railroad Equipment, dated as of January 1, 1981 (herein called the "Lease" and the terms defined therein being hereinafter used with the same meaning), which Lease provides for the execution and delivery from time to time of Certificates of Acceptance substantially in the form hereof for the purpose of confirming delivery and acceptance of the Units of the equipment leased under the Lease.

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessee hereby confirms and agrees as follows:

1. Lessee hereby accepts and leases from Lessor under the Lease, the Units of the equipment (the "Delivered Units") which are described below:

Number of Units	Purchase Price of Each Unit	Description of Unit	Road Numbers
_____	_____	_____	_____

2. The acceptance date of the Delivered Units is the date of this Certificate of Acceptance set forth in the opening paragraph hereof.

3. Lessee and Lessor hereby confirm that the Delivered Units have been duly inspected in accordance with Section 2 of the Lease and duly marked in accordance with the terms of Section 5 of the Lease and Article 7 of the Security Agreement referred to therein and that Lessee has accepted the Delivered Units for all purposes hereof and of the Lease; provided,

however, that nothing contained herein or in the Lease shall in any way diminish or otherwise affect any right that Lessee or Lessor may have with respect to the Delivered Units against Trinity Industries, Inc.

IN WITNESS WHEREOF, Lessee has caused this Certificate of Acceptance to be duly executed as of the day and year first above written and to be delivered in the State of Texas.

MARTIN GAS SALES, INC.,  
as Lessee,

By \_\_\_\_\_  
Title

STATE OF TEXAS )  
COUNTY OF Gregg ) : ss.:

On this 17<sup>th</sup> day of February, 1981, before me personally appeared Margaret Martin to me personally known, who being by me duly sworn, says that he is a officer of MARTIN GAS SALES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Darla Martin  
Notary Public

[Notarial Seal]

My Commission Expires 2/14/84

STATE OF TEXAS                    )  
                                      : ss.:  
COUNTY OF DALLAS                )

On this 18th day of February, 1981, before me personally appeared Carroll L. Bennett to me personally known, who being by me duly sworn, says that he is President of MERCANTILE TEXAS CAPITAL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Deane R. Rattas  
Notary Public

[Notarial Seal]

My Commission expires

March 10, 1984

STATE OF TEXAS

COUNTY OF

)  
) ss.:  
)

On this 20 day of February, 1981, before me personally appeared Rubin S. Martin, Jr., to me personally known to be the person described in and who executed the foregoing instrument and he acknowledged that the execution of the foregoing instrument was his free act and deed.

Karen Williams  
Notary Public

(Notarial Seal)

My Commission expires 5-2-84